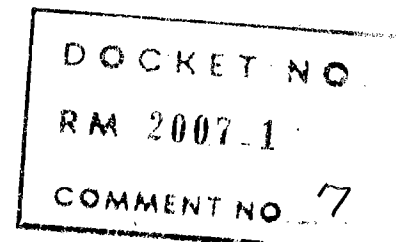


**Before the  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.**



\_\_\_\_\_)  
**In the Matter of** \_\_\_\_\_)  
**Section 109 Report to Congress** \_\_\_\_\_)  
**Regarding Cable and Satellite** \_\_\_\_\_)  
**Statutory Licenses** \_\_\_\_\_)

**Docket No. 2007-1**

**JOINT COMMENTS OF COPYRIGHT OWNERS**

The undersigned Phase I claimant groups that participate in Section 111 and 119 proceedings, including the Joint Sports Claimants, the Program Suppliers, the National Association of Broadcasters, the Public Television Claimants, the Music Claimants, the Canadian Claimants Group, National Public Radio and the Devotional Claimants<sup>1</sup> (collectively “Copyright Owners”) hereby submit these Joint Comments in response to the Copyright Office’s Notice of Inquiry for the Section 109 Report to Congress, 72 Fed. Reg. 19039 (April 16, 2007) (“NOI”).<sup>2</sup> The NOI identifies multiple proceedings related to Section 111 that are pending before the Copyright Office (“Office”) and that have already been the subject of extensive comments. The Copyright Owners urge the Office to resolve these proceedings expeditiously, and not to delay resolution of these important questions while waiting to submit the Section 109

---

<sup>1</sup> The Devotional Claimants who are signatories to these Joint Comments represent the following entities: Amazing Facts, Inc., American Religious Town Hall Meeting, Inc., Billy Graham Evangelistic Association, Catholic Communications Corp., Christian Broadcasting Network, Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Evangelical Lutheran Church in America, Faith for Today, Family Worship Center Church, In Touch Ministries, It Is Written, Joyce Meyer Ministries, Liberty Broadcasting Network, Oral Roberts Evangelical Association, RBC Ministries, Reginald B. Cherry Ministries, Rhema Bible Church, Ron Phillips Ministries, Speak the Word Church International, The Potter’s House of Dallas, Inc., Zola Levitt Ministries, Inc.

<sup>2</sup> Some Phase I claimant groups intend also to submit individual comments on other issues identified in the NOI.

identified in the NOI through legislation, the earliest action is likely to be taken is after the Section 109 Report is submitted to Congress in June 2008.<sup>3</sup> And if Congress decides to act, it will benefit from clear statements from the Office interpreting the existing provisions of Section 111.

In order to provide immediate guidance to the parties on the proper application of the existing Section 111 compulsory license regime, the following proceedings -- involving issues which in all cases have been pending for over a year, and in some cases for many years -- should be addressed without waiting for the completion of the Section 109 Report:

1. **Digital Signals Proceeding** -- In response to a Petition for Rulemaking submitted by the Program Suppliers and Joint Sports Claimants in 2005 requesting clarification on the application of the Section 111 compulsory license to digital broadcast signals, the Office recognized that issues regarding the retransmission of distant digital signals by cable operators are within its rulemaking authority. NOI at 19051. As noted in the NOI, *id.*, in 2006 the Office issued a Digital Signals NOI (71 Fed. Reg. 54948 (Sept. 20, 2006)) and obtained comments from interested parties. In their comments, copyright owners provided multiple examples of information related to the retransmission of digital broadcast signals that was absent or incorrect on cable operator SOAs. The respective commenters hereby incorporate by reference their pleadings and accompanying exhibits in that proceeding, as follows: Petition for Rulemaking *In re Retransmissions of Digital Broadcast Signals Pursuant to the Cable Compulsory License* (May 23, 2005); Comments of the Copyright Owners in Docket No. RM 2005-5 (Nov. 6, 2006); Comments of National Public Radio in Docket No. RM 2005-5 (Nov. 6, 2006); Reply

---

<sup>3</sup> Copyright Owners also note that June 2008 falls in the second session of the 109<sup>th</sup> Congress during a presidential election year, so it is unlikely that Congress will consider Section 109 Report issues before at least early 2009.

**3. Definition of Network Station** -- In a 2005 Petition for Rulemaking from the National Cable & Telecommunications Association ("NCTA"), the Office was asked once again to revisit the longstanding decision that for purposes of calculating Section 111 royalties, Fox is treated as an independent station. *See* NOI at 19049 n. 10 (referring to NCTA rulemaking petition).<sup>4</sup> Paxson Communications had previously sought clarification on this same issue and a rulemaking proceeding was initiated by the Office in 2000 and is still open. *See id.* (rulemaking NOI was published at 65 Fed. Reg. 6946 (Feb. 11, 2000)). Thus, interested parties have already had the opportunity to file a complete set of comments on this issue and there is no need for the Office to delay issuance of a ruling in the ongoing proceeding based on the existing version of Section 111. The Office should expeditiously conclude the open rulemaking proceeding and issue a ruling reiterating its prior decisions so that there is no ongoing uncertainty on this point -- under the existing version of Section 111 only ABC, NBC and CBS stations qualify as network stations for purposes of computing Section 111 royalties. The respective commenters hereby incorporate by reference their comments in that proceeding, as follows: Comments of the Joint Sports Claimants in Docket No. RM 2000-2 (April 11, 2000); Comments of Program Suppliers in Docket No. RM 2000-2 (April 11, 2000); Reply Comments of Program Suppliers in Docket No. RM 2000-2 (May 11, 2000); and Comments of the Music Claimants, RM 2000-2 (April 11, 2000).

---

<sup>4</sup> The NOI inexplicably states that "it is unclear whether [Fox] can be considered a network station for Section 111 purposes." NOI at 19049. In fact there is clear precedent, including the Librarian's decision affirming the CARP ruling in the 1990-92 cable distribution proceeding, that for purposes of Section 111 Fox programming is compensable "nonnetwork programming." *See Distribution of 1990, 1991 and 1992 Cable Royalties*, 61 Fed. Reg. 55653, 55660 (1996).

petitions as soon as possible, and not to delay action pending final preparation of the Section 109 Study Report and possible congressional action based on the contents of that Report. These pending rulemaking proceedings have languished far too long without resolution, and the Section 109 Study proceedings should not be permitted to delay further Copyright Office action on these issues.

July 2, 2007

Respectfully submitted,

**PROGRAM SUPPLIERS**

Gregory O. Olaniran /mjw  
Gregory O. Olaniran  
D.C. Bar No. 455784  
Lucy Holmes Plovnick  
D.C. Bar No. 488752  
STINSON MORRISON HECKER LLP  
1150 18<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20036  
Telephone: (202) 785-9100  
Fax: (202) 572-9970  
golaniran@stinson.com

**JOINT SPORTS CLAIMANTS**

Michele J. Woods  
Robert Alan Garrett  
D.C. Bar No. 239681  
Michele J. Woods  
D.C. Bar No. 426137  
ARNOLD & PORTER LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206  
Telephone: (202) 942-5000  
Fax: (202) 942-5999  
michele\_woods@aporter.com

**PUBLIC TELEVISION CLAIMANTS**

Ronald G. Dove, Jr. /mjw  
Ronald G. Dove, Jr.  
D.C. Bar No. 430533  
COVINGTON & BURLING LLP  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2401  
Telephone: (202) 662-5685  
Fax: (202) 662-6291  
rdove@cov.com

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

John I. Stewart, Jr. /mjw  
John I. Stewart, Jr.  
D.C. Bar No. 913905  
R. Elizabeth Abraham  
D.C. Bar No. 494101  
CROWELL & MORING LLP  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2595  
Telephone: (202) 624-2685  
Fax: (202) 628-5116  
jstewart@crowell.com

**NATIONAL PUBLIC RADIO**

*Gregory A. Lewis / mju*

Neal A. Jackson

Gregory A. Lewis

D.C. Bar No. 420907

NATIONAL PUBLIC RADIO

635 Massachusetts Avenue, N.W.

Washington, DC 20001-3753

Telephone: (202) 513-2050

Fax: (202) 513-3021

glewis@npr.org

**DEVOTIONAL CLAIMANTS**

*Clifford M. Harrington / mju* *Arnold P. Lutzker / mju*

Clifford M. Harrington

D.C. Bar No. 218107

PILLSBURY WINTHROP SHAW PITTMAN  
LLP

2300 N Street, N.W.

Washington, D.C. 20037

Telephone: (202) 663-8525

Fax: (202) 663-8007

clifford.harrington@pillsburylaw.com

Arnold P. Lutzker

D.C. Bar No. 101816

Allison L. Rapp

Member Maryland Bar

Jeannette M. Carmadella

DC Bar No. 500586

LUTZKER & LUTZKER LLP

1233 20<sup>th</sup> Street, NW, Suite 703

Washington, D.C. 20036

Telephone: (202) 408-7600

Fax: (202) 408-7677

arnie@lutzker.com

*Edward S. Hammerman / mju* *W. Thad Adams III / mju*

Edward S. Hammerman

D.C. Bar No. 460506

HAMMERMAN, PLLC

5335 Wisconsin Avenue, NW

Suite 440

Washington, D.C. 20015-2052

Telephone: (202) 686-2887

Fax: (202) 318-5633

ted@copyrightroyalties.com

W. Thad Adams III

N.C. Bar No. 000020

ADAMS EVANS PA

Suite 2350 Charlotte Plaza

201 South College Street

Charlotte, NC 28244

Telephone: (704) 375-9249

Fax: (704) 375-0729

wta@adamspat.com